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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-08-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS.JUSTICE R. BANUMATHI

H.C.P.NO.26 OF 2007

Rani
W/o.David .. Petitioner

Vs.

1. The State Rep. by
The Inspector of Police,
C-1 Flower Bazaar Police Station,
Chennai.

2. The Commissioner of Police,
Greater Chennai,
Emgore, Chennai 600 008.

3. The Secretary to Government,
Prohibition & Excise Department,
Secretariat, Chennai 600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Habeas Corpus directing the respondents to produce the petitioner's son N.Napoleon S/o. David, aged about 28 years and now confined at Puzhal Central Prison before this Court and set him at liberty forthwith by setting aside the detention order Vide No.321/2006 dated 9.12.2006, on the file of the second respondent.

For Petitioner : Mr.K. Sukumaran

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

P.K. MISRA, J

The mother of the detenu has filed this Habeas Corpus Petition challenging the order of detention dated 9.12.2006 passed by the Commissioner of Police, Chennai City, under Section 3(1) read with 3(2) of the Tamil Nadu Prevention of Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act,1982 (Tamil Nadu Act 14 of 1982), hereinafter referred to as "the Act".

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2. The order of detention has been passed on the allegation that the detenu along with four others was involved in C-1 Flower Bazaar Police Station Cr.No.625 of 2006. The date of occurrence of the said case is 7.11.2006. It is alleged that offence under Sections 341, 302, 342, 353 and 506(2) IPC had been committed. In the grounds of detention, it is narrated that on the date of occurrence, while John Christopher and Surenderan, Head Constables, were on duty, it was found that one Dilli Babu was running from Central Jail towards E.V.R. Road and one Viji @ Vijayan, Ramu @ Raman Viji @ Vijayan @ Radio Viji @ Idly Viji, Nepoleon and Suresh, who were armed with patta knives, chased Dilli Babu, who crossed E.V.R. Road and ran towards police booth. Viji @ Vijayan, Ramu @ Raman, Viji @ Vijayan @ Radio Viji @ Idly Viji and Nepoleon surrounded and prevented Dilli Babu from escaping and Viji @ Vijayan @ Radio Viji @ Idly Viji instigated that the person should be killed as he had killed one Veera. Immediately, Viji @ Vijayan and Ramu @ Raman cut Dilli Babu with patta knives. Viji @ Vijayan @ Radio Viji @ Idly Viji cut Dilli Babu over his head, face, body and hand with the patta knife. Head Constable John Christopher raised shouts and ran towards the spot. Dilli Babu fell near the police booth. Suresh stood near and prevented Dilli Babu from escaping. Viji @ Vijayan @ Radio Viji @ Idly Viji and Nepoleon caught hold of the hands of the Head Constable John Christopher, who tried to push and apprehend all the persons. Further, Viji @ Vijayan @ Radio Viji @ Idly Viji asked his associate to cut Dilli Babu till he died. Later they left the Head Constable and ran away from the spot. The Head Constable chased them along with public, but the culprits threatened them at the point of knife. The culprits took advantage of the panic situation and escaped from the spot. John Christopher, Head Constable along with other Head Constable Surendran found the name of the injured is Dilli Babu and contacted C-1 Patrol vehicle and the injured Dilli Babu was taken to General hospital for treatment, but he was declared dead by the Duty Doctor as "brought dead". John Christopher, Head Constable, lodged complaint at C-1 Flower Bazaar Police Station on the basis of which Cr.No.625 of 2006 was registered.

3. In the grounds of detention, it was indicated:

> "... The offences under section 341, 342, 353, 302 and 506 (2) IPC relates to wrongful restraint, wrongfully confining, use of criminal force to deter public servant from discharging his duty, murder and criminal intimidation as such punishable under chapters 16 and 17 of the said code. Hence, I am satisfied that Thiru Napoleon is habitually committing crime and also acted in a manner prejudicial to the maintenance of public order as such he is a Goonda as contemplated u/s 2(f) of the Tamil Nadu Act 14 of 1982. By committing the above described grave crime in the public, in front of the busy Railway Station where huge number of public gathered, in the busy day time has created alarm and a feeling of insecurity in the minds of the people of the area and thereby acted in a manner prejudicial to the maintenance of public order.

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> 4. I am also aware that Thiru Napoleon is in remand in C.1 Flower Bazaar Police Station Crime No.625/2006 and he has not moved any bail application so far. I am also aware that there is real possibility of his coming out on bail by filing bail application before Sessions Court or High Court since in similar cases bails are granted by the Sessions Court or High Courts. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order. On the materials placed before me, I am fully satisfied that the said Thiru Napoleon is a Goonda and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982."

4. The questions raised in this Habeas Corpus Petition are similar to the questions raised in H.C.P.No.24 of 2007. The order of detention is based on the very same ground case. The contention in the said decision to the effect that there was non-application of mind on the part of the detaining authority regarding the conclusion that the detenu is a "Goonda" since there was no reference to any other past activity is acceptable in the present case. Similarly the contention that the detaining authority has mechanically come to the conclusion that there was possibility of being released on bail is based on the mere ipse dixit of the detaining authority is also acceptable in the present case. Therefore, notwithstanding the seriousness of the allegations, we are constrained to quash the order of detention.

5. For the aforesaid reasons, the detention order dated 9.12.2006 detaining Nepoleon as a Goonda is quashed and he is set at liberty forthwith unless his presence is required in connection with any other case.

dpk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Inspector of Police,
   C-1 Flower Bazaar Police Station,
   Chennai.

2. The Commissioner of Police,
   Greater Chennai,
   Emgore, Chennai 600 008.

3. The Secretary to Government,
   Prohibition & Excise Department,
   Secretariat, Chennai 600 009.

4. The Public Prosecutor,
   High Court, Madras.

5. The Superintendent
   Central Prison, Puzhal, Chennai.

6. The Joint Secretary to Government,
   Public (Law & Order)
   Fort Saint George,Chennai-9.

+1 cc to Mr.K.Sukumaran, Advocate Sr.No.51938.

NSM(CO)
dcp/22.8 HCP.NO.26/2007

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